

Draft dated: 11/22/11

Resolution Urging the U.S. Department of Health and Human Services to Take Action to Ensure Continued Consumer Access to Professional Health Insurance Producers

Sponsored by Alabama, Arkansas, Delaware, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Utah,

WHEREAS: Licensed health insurance producers (agents and brokers) provide a wide range of services for both individual consumers and employers of all sizes. Producers interface with insurers, acquire quotes, analyze plan options, and consult with clients throughout the purchase of health insurance. They also provide ongoing service to help their clients utilize and optimize their coverage effectively;

WHEREAS: Insurance producers also provide guidance regarding benefit and contribution arrangements to ensure compliance with applicable state and federal laws/regulations; assist with establishing Section 125 plans, HRA, FSA, and other programs to maximize tax advantages and ensure compliance with applicable IRS guidelines; create educational materials and provide on-site assistance to aid in employee benefit communication; assist in managing eligibility for new hires and terminated employees; provide advocacy for employees through the health insurance claim process; and advocate for employers with insurers in developing proposals, renewals, and for service issues throughout the year;

WHEREAS: It is essential to consumers that producers continue to perform these duties, as employers and individual consumers will continue to need professional guidance in the years to come;

WHEREAS: Section 2718 of the [Patient Protection and Affordable Care Act \(PPACA\) Public Health Service Act \(PHSA\)](#) grants important responsibilities to the National Association of Insurance Commissioners (NAIC) and directs the NAIC to develop the standardized definitions and methodologies to be used to implement the Act's medical loss ratio (MLR) requirements;

WHEREAS: The NAIC has consistently expressed its concern about the adverse effects that the MLR requirements have on insurance producers and on the continued ability of producers to provide the level of advocacy and service that has traditionally been afforded. On October 13, 2010, the NAIC urged HHS to "recognize the essential role served by producers and accommodate producer compensation arrangements in any MLR regulation promulgated." On October 27, 2010, the NAIC again reiterated to the agency that "we are very concerned about the impact the medical loss ratio requirement could have on the ability of insurance agents and brokers to continue assisting health insurance consumers at a time of rapid changes that makes their role even more essential;"

WHEREAS: Growing concern over insurance market disruption caused by the MLR requirements has led many insurance commissioners to request MLR adjustments for their individual markets, but the adjustment process is both complicated and cumbersome;

WHEREAS: The NAIC established the Professional Health Insurance Advisors (PHIA) (EX) Task Force in November 2010 to further identify, analyze, and recommend options for addressing the negative impacts on health insurance producers, insurance consumers, and insurance markets as a result of the MLR requirements;

WHEREAS: The PHIA (EX) Task Force has examined the effects the MLR mandates have had on insurance producers and consumers and in the process has solicited and received extensive input from affected parties, gathered relevant information, and engaged in meaningful and ongoing dialogue with HHS concerning these important subjects;

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WHEREAS: As part of its efforts and examination, the PHIA (EX) Task Force has conducted a public hearing and collected testimony, most notably in connection with the NAIC's 2011 Spring National Meeting, which demonstrates that producers engage in a broad array of post-sale activities on behalf of consumers that improve the health care quality that they ultimately receive. The Task Force heard testimony that the PPACA's MLR requirements have had profound detrimental marketplace effects for insurance producers and, more importantly, are adversely affecting the quality of service provided to consumers and the ability of insurance purchasers to access and rely on competent and qualified insurance advisors;

WHEREAS: In May 2011, a national actuarial study conducted for the PHIA (EX) Task Force regarding producer compensation in the PPACA MLR calculation observed that, based on data from producers and insurers, "in 2011, a significant number of companies have reduced commission levels, particularly in the individual market;"

WHEREAS: An August 2011 Government Accountability Office report entitled *Private Health Insurance: Early Experiences Implementing New Medical Loss Ratio Requirements* reached similar conclusions and found that "[a]lmost all of the insurers we interviewed were reducing brokers' commissions and making adjustments to premiums in response to the PPACA MLR requirements. These insurers said that they have decreased or plan to decrease commissions to brokers in an effort to increase their MLRs;"

WHEREAS: The PHIA (EX) Task Force has voted to recommend that the NAIC endorse H.R. 1206, the bipartisan *Access to Professional Health Insurance Advisors Act of 2011* but recognizes that the current political environment makes the prospects of enactment for this and other potential PPACA amendments uncertain at this time.

WHEREAS: The level and quality of expertise, service, and advocacy provided to consumers by insurance producers cannot be sustained and will be diminished without adequate compensation;

WE, THE MEMBERS OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, THEREFORE RESOLVE THAT:

Congress should expeditiously consider legislation amending the MLR provisions of the PPACA in order to preserve consumer access to agents and brokers, and;

The Department of Health and Human Services should take whatever immediate actions are available to the Department to mitigate the adverse effects the MLR rule is having on the ability of insurance producers to serve the demands and needs of consumers and to more appropriately classify ~~independent~~ producer compensation in the final PPACA MLR rule. The potential options available to HHS include: (1) approving state MLR adjustment requests; (2) placing an immediate hold on implementation and enforcement of the MLR requirements relative to ~~independent~~ agent and broker compensation; and (3) considering the NAIC's finding that a significant portion of insurance producer activities are dedicated to consumer advocacy and service and therefore classifying an appropriate portion of producer compensation as a health care quality expense for purposes of Section 2718 of the ~~PPACA PHSA~~.